

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

ROBERT AVALLONE, :  
Plaintiff, :  
 :  
v. : Docket No. 2:06-CV-253  
 : 2:07-CV-1  
ROBERT HOFMAN, LESA TROWT, : (Consolidated)  
DR. SUSAN WEHRY, JOHN DOE, :  
JANE DOE, VERMONT DEPARTMENT :  
OF CORRECTIONS, DR. JOHN :  
LEPPMAN, DR. ROUSSE, PRISON :  
HEALTH SERVICES, DR. BALLARD, :  
MHM CORRECTIONAL SERVICES, INC., :  
Defendants. :

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed October 17, 2008. After careful review of the file and the Magistrate Judge's Report and Recommendation, no objections having been filed by any party, this Court ADOPTS the Magistrate Judge's recommendations in full for the reasons stated in the Report.

The defendants' motion for summary judgment (Paper 46) is DENIED. The motions to compel (Papers 49 and 50) are GRANTED. Failure to comply with the Court's order on the motions to compel may result in dismissal of the case with prejudice for failure to prosecute. It is also ordered that defendant Lesa Trowt's motion to dismiss (Paper 49) is DENIED without prejudice.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to

make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

Dated at Burlington, in the District of Vermont, this 4th day of November, 2008.

/s/ William K. Sessions III  
William K. Sessions III  
Chief Judge